IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 256 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE K.M.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

RAJNIBHAI BABALDAS PATEL

Versus

STATE OF GUJARAT

Appearance:

MR PK JANI for Petitioner

MR AJ DESAI, APP for Respondent

CORAM : MR.JUSTICE K.M.MEHTA

Date of decision: 11/01/2001

ORAL JUDGEMENT

1. Dr.Rajnibhai Babaldas Patel, Petitioner-original accused has filed this application under Sec.397 read with Sec.401 of the Code of Criminal Procedure, 1973, (hereinafter referred to as `Cr.P.C.') challenging the judgment and order dated 23rd February, 1999, passed by

the learned J.M.F.C. Vijapur, below Exh.9 in Criminal Case No.1084 of 1995. The learned Magistrate was pleased to reject the said application for discharging petitioner accused in this behalf.

2. The facts giving rise to this application are as under:

2.1 One Chandubhai Gobarbhai Raval was serving in Suryoday Plastic Factory, Kukarwada. He was daily wager by earning Rs.20/- per day. As per case of prosecution, it has been stated that on 18th March, 1995, at about 8 o' clock in the morning Shri Chandubhai Gobarbhai Raval (first informant) had gone to factory of Suryoday Plastic for discharging his duties and alongwith him his other two friends had also come. Thereafter, at about 5.30 his employer Mahendrabhai came inside and at that point of time when the first informant was working on the machine as sole worker, his employer all of a sudden put pressure on his right shoulder and pushed the right hand of the first informant into the machine and because of which all the fingers of the right hand of the first informant were cut. At that point of time, it is the case of the first informant that his employer, in that condition, took him to Visnagar for first aid at the hospital of the present petitioner which is known as Gokul hospital which is a private hospital and that too without informing the parents of the first informant. That thereafter, on having received the information, the relatives of the first informant also came to the hospital. The petitioner examined the first informant and he has also issued a certificate dated 24th April, 1995, showing the injuries on the first informant. The first informant was discharged on 23rd March, 1995.

2.2 Though this accident took place on 18th March, 1995, the first informant filed F.I.R. on 29th March, 1995, before police station in which he alleged that the petitioner who is doctor by profession did not inform the police about the same and therefore the present petitioner is alleged to have committed the offence under the provisions of Section 338 read with Section 114 of the Indian Penal Code. After necessary investigation carried out by the investigating authorities, chargesheet came to be filed in the Court of learned JMFC at Vijapur.

2.3 After having received the copy of the papers of chargesheet, petitioner preferred an application for discharge, for dropping of the proceedings and for quashing and setting aside the entire proceedings of Criminal Case No.1084 of 1995 qua the petitioner in

connection with the above aforesaid FIR which has been stated above. The said application came to be preferred on 25th September, 1998. The learned Magistrate by his order dated 23rd February, 1999, was pleased to reject the application below Ex.9 for discharge and for dropping of the proceedings filed by the present petitioner.

2.4 Being aggrieved and dissatisfied with the aforesaid order of the learned Magistrate, the petitioner has filed this Criminal Revision Application before this Court somewhere in the month of April, 1998. When the matter was placed before this Court, this Court (Coram: H.R.Shelat, J.) by order dtd.5.5.99 was pleased to pass the following order:

> "Rule returnable on 28th June, 1999.
>
> Mr.U.A.Trivedi, learned APP waives the service of Rule. Interim relief in terms of Para 10(B) qua the petitioner only. Direct service is permitted."

2.5 When the matter reached herein before this Court, Mr.Unwala, learned advocate for and on behalf of Mr.P.K.Jani, learned advocate appeared on behalf of applicant-accused has try to assail the order of the learned Magistrate and submitted that said order is contrary to and inconsistent with the provisions of Cr.P.C. read with provisions of IPC. He submitted that the order of the learned Magistrate is against the weight of evidence on record and the same is required to be quashed and set aside. He submitted that on perusal of the entire complaint filed by the first informant before the Vasai Police Station, there is no allegation worth the name against the present petitioner for the alleged offence under Sec.338. He further submitted that even on perusal of the entire papers of the chargesheet, there is not a whisper of the evidence worth the name against the present petitioner for the offence under Sec.338 of the IPC and, therefore, he submitted that the learned Magistrate has committed an error in not allowing the application filed by the present petitioner for dropping the proceedings against the petitioner.

3. Before I examine the contentions of the learned counsel for the petitioner, let me to refer the statutory provisions of IPC in this behalf.

> Sec.338 of the IPC which provides for causing grievous hurt by act endangering life or personal safety of others:-

"Whoever causes grievous hurt to any person by doing any act so rashly or negligently as to endanger human life, or the personal safety or others, shall be punished with imprisonment of either description for a term which may extend to two years or with fine which may extend to one thousand rupees, or with both.

4. Learned advocate for the petitioner has thereafter referred to Sec.202 of IPC which provides for intentional omission to give information of offence by person bound to inform.

"Whoever, knowing or having reason to believe that an offence has been committed, intentionally omits to give any information respecting that offence which he is legally bound to give, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine, or with both.

4.1 He has thereafter referred to Chapter 19 of Cr.P.C. which provides for trial of warrant cases by Magistrate which starts with Sec.238 to 250 of Cr.P.C. He has also invited my attention to Sec.239 of Cr.P.C. which provide when accused shall be discharged:

Sec.239 "If, upon considering the Police report and the documents sent with it under Section 173 and making such examination, if any, of the accused as the Magistrate thinks necessary and after giving the prosecution and the accused an opportunity of being heard, the Magistrate considers the charge against the accused to be groundless, he shall discharge the accused, and record his reasons for so doing.

Chapter 20 of Cr.P.C. trial of summons cases by Magistrates.

Sec.251 of Cr.P.C. :- substance of accusation to be stated:- When in a summons-case the accused appears or is brought before the Magistrate, the particulars of the offence of which he is accused shall be stated to him, and he shall be asked whether he pleads guilty or has any defence to make, but it shall not be necessary to frame a formal charge.

4.2 He has also invited my attention to Sec.258 of Cr.P.C.

"Sec.258 Power to stop proceedings in certain cases:- In any summons case instituted otherwise than upon complaint, a Magistrate of the first class or, with the previous sanction of the Chief Judicial Magistrate, any other Judicial Magistrate, may for reasons to be recorded by him, stop the proceedings at any stage without pronouncing any Judgment and where such stoppage of proceedings is made after the evidence of the principal witnesses has been recorded, pronounce a judgment, of acquittal and in any other case, release the accused, and such release shall have the effect of discharge.

4.3 On conjoint reading of Sec.338 read with Sec.202 of IPC read with relevant case papers, when the offence under Sec.338 of the IPC, and on the perusal of FIR and the papers of chargesheet, the case is not made out against the petitioner for an offence under Sec.202 and 114 of IPC. He submitted that petitioner is therefore required to be discharged or the proceedings initiated against the petitioner are required to be dropped in the light of the fact that there is no evidence against the petitioner prima facie for the offence alleged against him in the FIR. He further submitted that the learned Magistrate has totally erred in not appreciating that initially when the first informant was brought to Gokul Hospital, Dr.Kukarwada (who was another doctor) who had examined the injured. The present petitioner did not examine the first informant. It was not his duty to inform the police, inasmuch as, no history of such criminal act was disclosed to the present petitioner as alleged in the FIR. He further submitted that even from the statements in the chargesheet there is no iota of evidence suggesting that petitioner has committed offence punishable under Sec.338 of the IPC read with Sec.202 of the IPC, inasmuch as none of the witnesses has disclosed in their statements that the first informant had informed the petitioner, who is the doctor, about the entire alleged offence. He further submitted that if the statements read carefully go to show that no history was brought to the knowledge of the petitioner and therefore also no criminal act can be said to have been committed by the petitioner under Sec.338 or under Sec.202 of the IPC.

4.4 Learned counsel has also relied upon judgment of the Apex Court in the case of K. M. Mathew Vs. Kerala and another reported in AIR 1992 Supreme Court 2206. In Para 7 and 8 of the said decision it has been observed as

under:

"When the accused enters appearance in response to the summons, the Magistrate has to take proceedings under Chapter XX of the Code. But the need to try the accused arises when there is allegation in the complaint that the accused has committed the crime. If there is no allegation in the complaint involving the accused in the commission of the crime, it is implied that the Magistrate has no jurisdiction to proceed against the accused."

"It is open to the accused to plead before the Magistrate that the process against him ought not to have been issued. The Magistrate may drop the proceedings if he is satisfied on reconsideration of the complaint that there is no offence for which the accused could be tried. It is his judicial discretion. No specific provision is required for the Magistrate to drop the proceedings or rescind the process. The order issuing the process is an interim order and not a judgment. It can be varied or recalled. The fact that the process has already been issued is no bar to drop the proceedings if the complaint on the very face of it does not disclose any offence against the accused."

5. I have heard Shri A.J.Desai, learned APP in this behalf. Sec.202 which provides for intentional omission to give information of offence by person bound to inform. In my view, none of the ingredients of Sec.338 read with Sec.202 of IPC applies in this case. In view of the provisions of the Code of Criminal Procedure, even the learned Magistrate could have applied Sec.258 for dropping of the proceedings which the learned Magistrate has not taken into consideration. In my view, the judgment of the Supreme Court squarely applies and in view of the same the learned Magistrate has not properly exercised his jurisdiction vested to him and, therefore, in my view, this Criminal Revision Application is allowed. The order dated 23rd February, 1999, passed by the learned J.M.F.C. Vijapur, below Exh.9 in Criminal Case No.1084 of 1995 is quashed and set aside. The accused stands discharged for the offences punishable under Sec.338 and 202 read with Sec.114 of the IPC in connection with F.I.R. being C.R.No.I35/95 lodged before Vasai Police Station. Rule is made absolute.

(K.M. Mehta, J.)

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